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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/587,259

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Daniel Peyrat

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EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1781

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/587,259	<b>Applicant(s)</b> PEYRAT, DANIEL	
	<b>Examiner</b> Lien T. Tran	<b>Art Unit</b> 1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/26/06</u> .   | 6) <input type="checkbox"/> Other: _____                          |

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1: line 1, the recitation of " the form" does not have antecedent basis. Line 2, the phrase " comprises the steps consisting in" is indefinite because it is not known what is intended. Both comprising and consisting are used; thus, it is unclear if the method is open to additional steps or the method only includes the steps recited. Line 4, the recitation of " the bottom" does not have antecedent basis. Lines 6,7,10, the recitation of " confectioner's mix" is indefinite; what does applicant mean by " confectioner's mix", ( a mix belonging to a confectioner because confectioner is the maker or seller of confection). What would be considered as " confectioner's mix"?

Claim 2 has the same problem as claim 1 with respect to the recitation of " confectioner's mix". Also, it is not clear if applicant intends for a Markush group?; if so, the proper language is " selected from the group consisting of".

In claim 5, the phrase " in particular" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d). Also, the recitation of " card" is indefinite because it is not clear what material is considered as card; does applicant mean to say cardboard?

In claim 8: Line 2, the recitation of " the assembly" does not have antecedent basis; the term " confectioner's mix" has the same problem as claim 1.

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Claim 9 has the same problem as claim 2.

In claim 11, the recitations of “ the assembly, the optionally-pre-baked fruit trimming” do not have antecedent basis. Previous claims do not set forth any pre-baked fruit trimming. The term “ confectioner’s mix” has the same problem as claim 1.

In claim 12, the term “ confectioner’s mix” has the same problem as claim 1. Line 3, the recitation of ‘ the bottom” does not have antecedent basis. Line 4, the recitation of “ the margins”. Line 5, the recitation of “ the outside” does not have antecedent basis.

Claims 13 18-20 have the same problem as claim 5.

In claim 14, the recitation of “ the side walls” does not have antecedent basis.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the book “The Good Housekeeping Step-by-Step Cookbook” in view of “ The Brand Name Book of Baking” and Morito et al.

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The Good Housekeeping teaches to make individual fruit tart comprising the steps of preparing a confectionery filling comprising juice, sugar, butter and cornstarch, pressing dough onto both and up side of tartlet pan, baking the tartlet shell, filling the shell with confectionery mix and top with fruit pieces. The book also teaches that crusts with moist fillings are often partially or completely baked before they're filled for crisp result.

The Good Housekeeping does not teach baking the pastry after covering with confectionery filling and fruit, the use of brown sugar, the mold having elongated shape, the use of aluminum or card mold, applying the fruit by automatic means, freezing in the mold and the lining height as claimed.

The Brand Name cookbook teaches to make tart by filling the tart shell with filling and fruit and then baking the filled product. The book also teaches to make Blueberry pie wherein the fruit is mixed with sugar and cornstarch.

Morito et al disclose a method of forming pie or tart wherein an elongated, rectangular mold is used. ( see col. 1 lines 40-45)

The baking of shell containing the filling and fruit or baking of the shell before topping with filling and fruit are both well known alternative as shown by the two cookbooks. It would have been obvious to prebake the shell if one wants a crisp result or to do the vice versa if a crisp result is not wanted. The alternative sequence would have been readily apparent to one skill in the art. It would have been obvious to use a rectangular or elongated bar when desiring a different shape. Morito et al show that rectangular mold is known. A simple search on the internet also reveals different mold

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shapes for tart and pie; there are rectangular mold, round mold, pear-shaped mold etc.. Changing the shape of a food product is notoriously well known and would have been obvious to one skilled in the art. It would have been obvious to use brown sugar as a matter of preference. It would have been obvious to mix fruit with sugar and gelling agent such as starch when desiring a sweet taste and thicken fruit pieces. Such practice is well known in the art as shown by the Brand Name cookbook. I The use of disposable aluminum pie pan is well known in the art; most of commercially available pies are sold on aluminum pie pan. It would have been obvious to use disposable aluminum pie pan when making product for commercial purpose or for gathering in which the pan will not be retrieved. It would have been obvious to use automatic means when making large number or when desiring convenience. It would have been obvious to freeze the product when long term storage is desired; it would have been obvious to freeze it in the mold as a matter of convenience in that extra step is not taken to get the pastry out of the mold. It would have been obvious to adjust the lining height of the dough depending on the depth of the mold, the depth of the cavity wanted and the height of filling wanted. Such parameter is a result-effective variable which is well within the determination of one skilled in the art.

The prior art submitted on the IDS filed on 7/26/06 will not be considered except for reference GB 2186475 because there is no English abstract of the references.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

September 15, 2010

/Lien T Tran/

Primary Examiner, Art Unit 1781